GEORGE FASSELIN
v.
BUREAU OF LAND MANAGEMENT

IBLA 86-118 Decided April 5, 1988

Cross appeals from a decision of Administrative Law Judge Robert W. Mesch, affirming in part and reversing in part decisions by the Area Managers, Price River and Diamond Mountain Resource Areas, Moab and Vernal Districts, Utah, Bureau of Land Management, rejecting applications to transfer grazing preferences. Utah 060-83-01, Utah 080-83-01.

Affirmed in part, reversed in part.

1. Grazing Permits and Licenses: Base Property (Land): Ownership or Control -- Grazing Permits and Licenses: Base Property (Land): Transfers

   BLM may properly reject an application to transfer grazing preferences filed by the transferee more than 90 days after the sale of the base property to that transferee, since Departmental regulation 43 CFR 4110.2-3(b) requires that such applications be filed within 90 days of the date of sale.

2. Grazing Permits and Licenses: Base Property (Land): Ownership or Control -- Grazing Permits and Licenses: Base Property (Land): Transfers

   BLM may properly reject an application to transfer grazing preferences filed after the transferor has lost ownership or control of the base property to which the preferences attached by virtue of the filing of a petition in bankruptcy and a subsequent judicial sale of the property.

APPEARANCES: H. James Clegg, Esq., Bryce D. Panzer, Esq., and Rodney R. Parker, Esq., Salt Lake City, Utah, for George Fasselin; David K. Grayson, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

George Fasselin (Fasselin) and the Bureau of Land Management (BLM) have both appealed from a decision of Administrative Law Judge Robert W. Mesch, dated September 11, 1985, affirming in part and reversing in part decisions by the Area Managers, Price River and Diamond Mountain Resource Areas, Moab and Vernal Districts, Utah, BLM, rejecting Fasselin's applications to transfer certain grazing preferences.

The primary issues raised by this case concern ownership and control of two parcels of land (hereinafter referred to as the Hagman parcel and the Argyle parcel), which serve as base property for various grazing preferences. 1/ At the time Fasselin filed the applications, the Hagman parcel supported 223 Animal Unit Months (AUM's) in the Parleys Canyon allotment, 112 AUM's in the Hondo allotment and 159 AUM's in the Sulfur Canyon allotment. 2/ The Argyle parcel supported 452 AUM's in the Parleys Canyon allotment, 400 AUM's in the Humbug allotment and 342 AUM's in the Sulfur Canyon allotment. This case involves only the grazing preferences in those allotments attached to the Hagman and Argyle parcels.

On January 7, 1983, Fasselin filed an application seeking transfer of the total AUM's in the Hondo, Humbug and Sulfur Canyon allotments from Marius Henry Mills (Mills), Fasselin's father-in-law, to Fasselin. In the application, Fasselin offered land within the Hagman parcel as base property for the transfer and represented that the Argyle parcel and certain lands in the Hagman parcel controlled those AUM's. On January 10, 1983, Fasselin filed an application for the transfer of the total AUM's in the Parleys Canyon allotment from Mills to Fasselin. In that application, Fasselin offered certain land within the Hagman parcel as base property for the transfer and represented that the AUM's were being held by the Argyle parcel and certain lands within the Hagman parcel. Both of the transfer applications were signed by Fasselin and Mills on January 6, 1983.

In decisions dated April 6, 1983, the Area Managers of the Diamond Mountain (Vernal District) and Price River (Moab District) Resource Areas

1/ The Hagman parcel is described as the N 1/2 S 1/2 sec. 26, SW 1/4 SW 1/4 sec. 28, S 1/2 N 1/2, NW 1/4 NW 1/4, N 1/2 SE 1/4 sec. 33, and the W 1/2 NW 1/4, SW 1/4 SW 1/4 sec. 34, T. 11 S., R. 13 E.; lots 6 and 7 sec. 1, T. 12 S., R. 12 E.; and lot 4, SW 1/4 NW 1/4, NW 1/4 SW 1/4 sec. 5, lots 1, 6 and 7, SE 1/4, E 1/2 SW 1/4 sec. 6, N 1/2 NE 1/4 sec. 7; and the N 1/2 N 1/2 sec. 8, T. 12 S., R. 13 E., Salt Lake Meridian, Utah. The Argyle parcel is described as lots 10 and 11, sec. 30, T. 11 S., R. 14 E., Salt Lake Meridian, Utah.

2/ The Hagman parcel is essentially divided into two sub-parcels. The land situated in T. 11 S., R. 13 E., Salt Lake Meridian, Utah, supports the 223 AUM's in the Parleys Canyon allotment, while the land in T. 12 S., Rs. 12 and 13 E., Salt Lake Meridian, Utah, supports the 159 AUM's in the Sulfur Canyon allotment. In addition, the land situated in the N 1/2 S 1/2 sec. 26, T. 11 S., R. 13 E., Salt Lake Meridian, Utah, alone supports the 112 AUM's in the Hondo allotment.

proposed to reject the two transfer applications. 3/ The Area Managers proposed to reject the applications for 223 AUM's in the Parleys Canyon allotment, 112 AUM's in the Hondo allotment and 159 AUM's in the Sulfur Canyon allotment, all of which were attached to the Hagman parcel, because Fasselin had failed to file an application to transfer the grazing preferences within 90 days of his January 5, 1978, purchase of the Hagman parcel from Mills, as required by 43 CFR 4110.2-3(b). The Area Managers also proposed to reject the applications for 452 AUM's in the Parleys Canyon allotment, 400 AUM's in the Humbug allotment and 342 AUM's in the Sulfur Canyon allotment, all of which were attached to the Argyle parcel, because the Argyle parcel had been sold by the bankruptcy court on October 8, 1982, to Dr. Dale Terry (Terry), who subsequently applied for and had been granted a transfer of all those grazing preferences. 4/

The April 1983 decisions of the Area Managers each provided that Fasselin could file a protest of the proposed decision pursuant to 43 CFR 4160.2 and that, in the absence of a protest, the proposed decision would become final "without further notice," whereupon the decision could be appealed for the purpose of a hearing before an Administrative Law Judge. Fasselin appealed each decision, after it became final.

Judge Mesch conducted a hearing on March 12, 1985, in Price, Utah, at which were represented Fasselin, BLM, Judith A. Boulden, the court-appointed receiver for the bankruptcy estate of Mills, and Terry, who was permitted to intervene in the proceedings. In his decision, Judge Mesch affirmed the Area Managers' decisions to reject Fasselin's transfer applications for grazing preferences attached to the Hagman parcel, concluding that the applications had been filed more than 90 days after Fasselin had acquired ownership or control of the Hagman parcel, under any of the theories offered by Fasselin as to when acquisition had occurred. Fasselin has appealed that portion of Judge Mesch's September 1985 decision.

Judge Mesch reversed the Area Managers' decisions to reject Fasselin's transfer applications for grazing preferences attached to the Argyle parcel, concluding that the sale of the Argyle parcel to Terry would not preclude Mills from transferring the grazing preferences attached to the parcel to Fasselin under the regulations in effect in 1983. BLM has appealed that portion of Judge Mesch's September 1985 decision.

We will deal first with the question of whether Judge Mesch properly affirmed the Area Managers' decisions rejecting Fasselin's transfer applications for grazing preferences attached to the Hagman parcel. The facts concerning ownership and control of the Hagman parcel are that prior to 1975

3/ The Vernal District has jurisdiction over the Parleys Canyon allotment, while the Moab District has jurisdiction over the Hondo, Humbug and Sulfur Canyon allotments. Thus, overlapping jurisdiction with respect to Fasselin's transfer applications necessitated action by Area Managers in both BLM districts.
4/ In September 1978, Mills filed a Chapter 11 bankruptcy petition. The Argyle parcel was listed as an asset of his estate; the Hagman parcel was not.

Fasselin and Mills had joint control of the Hagman parcel through a lease from Hagman. Thereafter, Mills and his wife entered into a real estate contract in April 1975 for the transfer of the Hagman parcel from Walter E. Hagman (Hagman) to them. 5/ The contract recited the purchase price for the parcel and that a down payment had been made, with the balance to be paid in specified installments between June 1, 1975 and January 2, 1990 (Exh. F-1).

The case record contains a warranty deed executed by Hagman and his wife conveying the parcel to Mills and his wife. In addition, the Hagmans and the Mills executed an escrow agreement in April 1975 which placed both the real estate contract and the warranty deed in escrow with the Zions First National Bank of Salt Lake City, Utah. By signing the escrow agreement, the bank agreed to dispose of the documents in accordance with the terms of the escrow agreement. Those terms authorized the bank to deliver the deed and other documents to Mills and his wife "upon payment to [the bank] of the total sum of $ 96,500.00."

Thereafter, by deed dated January 5, 1978, Mills and his wife conveyed the Hagman parcel to Fasselin and his wife (BLM Exh. 1). 6/ The deed provided that, by accepting and recording the deed, the Fasselins were to pay all remaining installments due under the real estate contract between the Mills and the Hagmans. The deed further stated that the Fasselins had entered into an oral agreement "on or about the first day of January, 1977," under which they had paid the installments due on January 2, 1977, and January 2, 1978, and agreed to pay the remaining installments (BLM Exh. 1). The deed was recorded on February 28, 1979, in Carbon County, Utah, and on March 30, 1981, in Duchesne County, Utah.

On January 26, 1982, Fred A. and K. Jolene Hagman, apparently as successors-in-interest to the Hagmans under the April 1975 escrow agreement, entered into another escrow agreement with the Fasselins regarding conveyance of the Hagman parcel. 7/ See Tr. 41. Under that latter agreement, the Zions First National Bank was authorized to deliver the documents conveying the parcel directly to the Fasselins upon full payment of the total amount remaining due.

5/ Although at the hearing Gloria Fasselin, George Fasselin's wife and the daughter of Mills, testified that her father and Hagman entered into the contract, we note the copy of the contract presented as an exhibit at the hearing, was not executed by Hagman (Tr. 38; Exh. F-1).

6/ Four days prior to the deed from the Mills to the Fasselins, on Jan. 1, 1978, Fasselin and Mills had executed a lease agreement whereby Fasselin leased the Hagman parcel to Mills for a 5-year period. The lease agreement provided that Fasselin would "pay all payments that fall due on said property" (BLM Exh. 2 at 2).

7/ The January 1982 escrow agreement provided that the Hagmans agreed to sell and convey to the Fasselins certain property, "an exact description of which is set out in the documents deposited with [the Zions First National Bank] and/or in the Schedule of Items, Fees, and Instructions attached hereto and made a part of this agreement." The "Schedule of Items, Fees, and Instructions" attached to the escrow agreement stated that the documents placed with the bank were "[a]s per terminated Walter E. Hagman -- Henry Mills Escrow" (Exh. F-2).

[1] The applicable regulation, 43 CFR 4110.2-3(b), provides that:

> If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with the authorized officer a properly executed transfer application showing the base property and the amount of grazing preference being transferred in animal unit months.

Failure to comply with this regulation "may result in rejection of the transfer application." 43 CFR 4110.2-3(f).

In his statement of reasons for appeal (SOR), Fasselin contends that there never has been a "transfer" of the Hagman parcel which would trigger invocation of 43 CFR 4110.2-3(b), but that all times both Mills and Fasselin have jointly owned or controlled the Hagman parcel as part of a common family livestock business. Fasselin asserts that, prior to the April 1975 real estate contract, he and Mills had jointly leased the Hagman parcel, and that the land was then purchased from Walter Hagman pursuant to an agreement between Mills and Fasselin that "Mills would sign the purchase documents * * * but that the Fasselins would make all the payments" (SOR at 4; see Tr. 37). Fasselin argues that thereafter, by virtue of this arrangement, Mills held the legal title, while the Fasselins held an equitable title under a purchase money resulting trust, citing Matter of Estate of Hock, 655 P.2d 1111 (Utah 1982). Fasselin asserts that joint ownership or control of the Hagman parcel continued after January 1978, as evidenced by the January 1, 1978, deed from the Mills and the subsequent January 1982 escrow agreement, with respect to the Fasselins, and the January 5, 1978, lease from Fasselin, with respect to Mills.

Fasselin contends that the 1975 purchase arrangement resulted in Mills holding legal title and the Fasselins holding equitable title under a purchase money resulting trust. A purchase money resulting trust may be deemed to exist if property is transferred to one party, but the purchase price is paid by another party in the course of the transaction. In such case, property will be considered held in a resulting trust for the benefit of the party who paid the purchase price. See generally 76 Am. Jur. 2d Trusts § 206 (1975); 89 C.J.S. Trusts § 116 (1955). One asserting the existence of a purchase money resulting trust must show that he paid the purchase price for the property and another party was given legal title. Matter of Estate of Hock, 655 P.2d at 1115. Legal title to land to be conveyed by an instrument placed in escrow remains in the grantor. 30A C.J.S. Escrows § 9 (1965). 8/

Nevertheless, we need not determine, in fact, whether or not a purchase money resulting trust was created in this case, because even if title to the

8/ It is provided at 30A C.J.S. Escrows § 9 (1965) that generally no title, estate, or interest rests in the grantee of an instrument placed in escrow, although it has been held that equitable title passes.

Hagman parcel did pass under the 1975 purchase arrangement, with legal title going to Mills and equitable title going to the Fasselins under the theory of a purchase money resulting trust, that arrangement would have effected a transfer of the parcel triggering the regulation. The Fasselins filed no application to transfer the grazing privileges attached to the Hagman parcel within 90 days of that transfer, based on their continuing interest in the Hagman parcel. Rather, following the execution of the 1975 purchase contract for the Hagman parcel, Mills sought and BLM approved the transfer of grazing preferences attached to the Hagman property from Mills and Fasselin to Mills alone. That action by Mills is inconsistent with Fasselin's representation of what the intent of Mills and Fasselin was when Mills entered into the 1975 purchase contract. In addition, the recitation in the January 5, 1978, deed, that Mills and his wife "for good and valuable consideration, receipt of which is acknowledged, hereby grant, bargain, sell, and convey" the Hagman parcel to Fasselin and his wife, is inconsistent with Fasselin's representation that he and his wife were the real parties in interest under the purchase contract with Hagman from the time of its execution in 1975.

At the time of the January 5, 1978, sale to the Fasselins, the applicable regulation in effect, 43 CFR 4115.2-2(a)(2)(1977), provided:

> A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred.

In January 1983, Fasselin sought to transfer the grazing preferences attached to the Hagman parcel from Mills to him on the grounds that he had obtained the ownership or control of that property. His contention is that BLM erred in rejecting those transfer applications. Clearly, Fasselin's applications were not filed within 90 days of the transfer of the Hagman parcel, if the date of transfer is considered to be either the date of the 1975 purchase contract, the date of the 1978 deed from Mills to Fasselin, or the date the escrow account was transferred from Mills to Fasselin in January 1982.

Under the current regulation, it was within BLM's discretion to reject Fasselin's January 1983 transfer applications. See 43 CFR 4110.2-3(f). Where BLM adjudicates grazing privileges in the exercise of its administrative discretion, that action may be regarded as arbitrary, capricious, or inequitable only where it is not supportable on any rational basis. The burden is on the objecting party to show that a decision is improper. Bureau of Land Management v. Wagon Wheel Ranch, 62 IBLA 55, 65-67 (1982); Smith v. Bureau of Land Management, 48 IBLA 385, 393 (1980). Appellant has failed to show that BLM acted improperly in rejecting his applications as they related to the Hagman parcel. As Judge Mesch concluded:

> [I]n view of the course of actions that Mills and Fasselin have pursued over the years in their dealings with the BLM, it cannot reasonably be concluded that the Area Managers abused their discretion in applying the 90-day time limit. If nothing else, they could gain some assurance of avoiding future nondisclosures, mind boggling confusion, and the unnecessary expenditure of time and effort that could more properly be devoted to other administrative functions.

Decision at 14.

We, therefore, affirm Judge Mesch's September 1985 decision to the extent he affirmed the Area Manager's decisions rejecting Fasselin's January 1983 transfer applications for grazing preferences attached to the Hagman parcel.

We next turn to the question of whether Judge Mesch properly reversed the Area Managers' decisions rejecting Fasselin's transfer applications for grazing preferences attached to the Argyle parcel. The record shows that the Mills were owners of the Argyle parcel when on January 1, 1975, Mills leased the Argyle parcel to Fasselin from January 1, 1975, until January 1, 1979. They entered into another lease on January 1, 1979, for the same parcel. That lease was to expire January 1, 1985. See Exhs. I-2 and I-3. As noted supra, during the pendency of the first lease, Mills filed a Chapter 11 bankruptcy petition on September 11, 1978.

By order dated September 20, 1982, a U.S. Bankruptcy Judge in In re Mills in part ordered that the Argyle parcel be sold to Terry, who had been the successful bidder at a public auction. The order further provided that the grazing preferences attached to the Argyle parcel were "specifically excluded from transference hereunder and will retain their status as an asset of this estate to the extent such interest can be asserted by the Receiver." In re Mills, No. 81-0953 (Bankr. D. Utah), Order of Sale of Property, dated September 20, 1982, at 5.

As noted supra, Fasselin filed on January 7 and 10, 1983, applications to transfer from Mills, inter alia, the grazing preferences attached to the Argyle parcel. In their April 1983 decisions, the Area Managers rejected these applications because the Argyle parcel had been sold by the bankruptcy court to Terry, who had applied for and been granted the grazing preferences. The record shows that Terry filed a transfer application for the grazing preferences attached to the Argyle parcel on January 10, 1983. BLM approved the transfer on March 18, 1983.

In his September 1985 decision, Judge Mesch construed the Area Managers' decisions to mean that, by virtue of the sale of the Argyle parcel to Terry, Mills had automatically lost the grazing preferences attached thereto and could not thereafter transfer them to Fasselin. Judge Mesch stated that BLM was relying on the regulations in effect prior to July 5, 1978, and the longstanding Departmental interpretation of those regulations, which had essentially required that a transferor of grazing preferences from one base property to another base property must at the time of transfer own or control

the base property to which the preferences are attached. 9/ Judge Mesch stated, however, that the regulations had been amended on July 5, 1978, deleting the language relied upon by BLM (see 43 FR 29058 (July 5, 1978)). He noted that at all relevant times the regulations have simply provided that a transferee of grazing preferences from one base property to another base property must file a properly completed transfer application in advance of the transfer. See 43 CFR 4110.2-3(c).

Judge Mesch determined that the words "in advance" in 43 CFR 4110.2-3(c) did not mean in advance of the sale or loss of the base property, but in advance of the actual transfer of the grazing preferences. He further stated that there was no authority in the applicable regulations for the proposition that upon the sale of base property, the seller automatically is precluded from transferring the grazing preferences to new base property. He then stated:

> Under the circumstances, and the state of the law as embodied in the regulations, I cannot find that the BLM acted properly, reasonably, or equitably in denying the 1983 transfer application of Mills and Fasselin with respect to the grazing preferences attached to the Argyle base property. This does not mean, however, that Mills' and Fasselin's transfer application should have been approved without first obtaining the approval of the Bankruptcy Court. It simply means that the stated reason for denying the applications, i.e., that Mills immediately and automatically lost the grazing preferences upon the sale of the Argyle base property, is not supported by the law and the facts. It also means that the BLM erred in concluding that Mills' bankruptcy estate immediately and automatically lost any interest it might have had in the grazing preferences attached to the Argyle base property upon the sale of that property to Terry, and, therefore, it was not

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9/ Judge Mesch specifically stated:

"Prior to July 5, 1978, the grazing regulations provided that '[i]f a licensee or permittee loses ownership or control of * * * [a]ll or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice * * *,' 43 CFR 4115.2-1(e)(8) (1977); and '[a] licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him * * * to property owned or controlled by another person * * *,' 43 CFR 4115.2-2(b) (1977).

"On the basis of the above two provisions, the Department consistently held that '[l]oss of ownership or control of base property results automatically in the loss of grazing privileges attached thereto, in the absence of a timely application for transfer of those privileges to other qualifying base property;' and 'a timely application for transfer of grazing privileges from original base property to new base property can only be made while the original base property is within the ownership or control of the licensee.' Fillmore Ranches, 30 IBLA 282 (1977); Jimmie and Leona Ferrara, 47 IBLA 335 (1980)." (Decision at 16).

necessary to obtain the approval of the Bankruptcy Court prior to the approval of the transfer of the grazing preferences to Terry.

(Decision at 21). 10/

We disagree with Judge Mesch's ultimate conclusion that BLM erred in rejecting the applications in question. We conclude that rejection was, in fact, proper, but not for the reasons set forth by BLM in its decisions.

In its SOR, BLM does not take issue with Judge Mesch's construction of the Area Managers' decisions. Rather, BLM contends that, under the current regulations, base property is still a prerequisite for grazing use and, thus, a transfer of grazing preferences must be made by one owning or controlling the base property. BLM argues that it has interpreted the July 5, 1978, amendment of the applicable regulations as effecting only a cosmetic change, referring to language in the BLM Manual that "[o]nly the grazing preference of base properties owned or controlled by the transferor in good standing on the date of application is subject to transfer" (BLM SOR at 9). In the alternative, BLM asserts that it is not necessary to entertain the question of interpreting the regulations because BLM still could not have approved the applications in question without the approval of the bankruptcy court.

We need not reach the issue that Judge Mesch found determinative with respect to the grazing preferences controlled by the Argyle parcel because, even if the seller of base property has a post-transfer right to assign grazing preferences, this would not benefit Mills and Fasselin; Mills was not the seller of the Argyle parcel.

In January 1975 Mills leased the Argyle parcel to Fasselin. Thus, at that time Fasselin controlled the base property by lease. When Mills filed for Chapter 11 bankruptcy in September 1978, the Argyle parcel became part of the bankruptcy estate. Upon appointment and qualification of the trustee of the estate of a bankrupt, title to the property of the bankrupt rests in the trustee. 11 U.S.C. § 110(a) (1976). 11/ The bankruptcy estate is subject to the exclusive jurisdiction of the bankruptcy court. Lockhart v. Garden City Bank and Trust Co., 116 F. 2d 658, 660 (2d Cir. 1940); see

10/ We note that in response to Judge Mesch's September 1985 decision, BLM proposed to amend existing regulations by reinserting language which would provide that grazing preferences are immediately terminated "without further notice" when a permittee loses ownership or control of the base property to which the preferences are attached. 43 CFR 4110.2-1(d) (52 FR 19038 (May 20, 1987). This amendment was intended to clarify that one "transferring a grazing preference must own or control the base property at the time the application is filed." 52 FR 19034 (May 20, 1987). The proposed regulations have now been finalized. See 53 FR 10224 (Mar. 29, 1988).

11/ Subsequent to the filing of Mills' bankruptcy petition, the bankruptcy law was completely revised. That revised law provides that all legal or equitable interests in property of the debtor as of the commencement of the case comprise the bankruptcy estate. 11 U.S.C. § 541(a)(1) (1982).

also In re General Carpet Corp., 38 F. Supp. 200, 203 (E.D. Pa. 1941). Thus, in 1978 title to the Argyle parcel was transferred by law from Mills to the bankruptcy estate. At that time the parcel was subject to the lease to Fasselin. That lease expired on January 1, 1979. Although Mills on that date executed a new lease in favor of Fasselin, Mills no longer had title to the Argyle parcel and he was without authority to alienate any interest in that property. Thus, Fasselin's control of the Argyle base property lapsed when his lease expired on January 1, 1979.

Subsequently, the bankruptcy court authorized the sale of the Argyle parcel to Terry. The seller of the Argyle parcel was the bankruptcy estate, not Mills. Any post-sale right to transfer grazing preferences was vested in the bankruptcy estate, not Mills. Thus, BLM clearly was precluded in this case from approving Fasselin's January 1983 applications to transfer the grazing preferences attached to the Argyle parcel. 12/ Any application to transfer such grazing preferences should have been filed by the bankruptcy estate and approved by the bankruptcy court which had exclusive jurisdiction of the bankruptcy estate.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge

12/ The Administrative Law Judge and Fasselin have focused on the reason given by BLM for rejecting the applications as they relate to the Argyle parcel. Since we have determined that there was a proper ground for rejection, we need not examine the basis given by BLM for rejection, i.e., BLM's approval of the transfer of the subject grazing preferences to Terry. However, we note that the record contains a May 6, 1983, order issued by a U.S. Bankruptcy Judge, requiring BLM to show cause why it should not be held in contempt "for violation of this Court's prior Order directing Abeyance of Forfeiture of Assets of this Estate dated October 8, 1982, by issuance of these certain decisions dated April 6, 1983, relative to Parleys Canyon allotment # 4883 and Humbug allotment number 4055 and Sulfur Canyon allotment number 4111." In re Mills, No. 81-0953 (Bankr. D. Utah), Order to Show Cause In Re Contempt, dated May 6, 1983. The record does not reveal the results of that order, although the bankruptcy estate and Terry apparently have resolved any differences over the grazing preferences in question subject to the outcome of Fasselin's appeal (Tr. 21-27).